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EXAMINER MEINCKE DIAZ, SUSANNA M				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/874,717

Applicant(s)

FLORES ET AL.

Examiner

Susanna M. Diaz

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 29, 2007 has been entered.

Claims 1, 7, 10, 12, 16, 22, and 26 have been amended.

Claims 1-29 are pending.

Response to Arguments

2. Applicant's arguments filed October 29, 2007 have been fully considered but they are not persuasive.

Applicant argues that neither Hendrickson nor Stemm teaches or suggests that the application usage statistics be adjusted to take into account when an interrupt occurs." (Page 10 of Applicant's response) The Examiner respectfully disagrees. As explained in the revised art rejection below, Stemm measures energy consumption for various scenarios of differing activities performed over differing periods of time. The effects of moving from one state to another (e.g., sleep state, idle state, performing different activities such as checking e-mail) are also measured (¶¶ 19-33). An event that causes the PDA to change from one state to another is effectively an interrupt.

Also, it should be noted that the gathering of usage statistics that include various measurements is merely an act of data collection. The scope of gathering measurement data does not explicitly incorporate the steps of measuring each respective usage statistic. Looking toward the independent claims, the gathered usage statistics are merely "tabulated." Based on the specification, a tabulation of data may be broadly interpreted as compiling the data. Therefore, no manipulative steps or structural elements of the claimed invention are particularly reliant on the specific type of data gathered. Thus, this non-functional, descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) ; *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106. As a matter of fact, page 34 of Applicant's specification states that "tabulation can be in the form of incorporation into a database." In this embodiment, tabulation is nothing more than a compilation of usage statistics. There is no analysis performed on these usage statistics such that the specific analysis requires the particularly claimed measurements. Even though claims 5 and 6, for example, explicitly recite steps of measuring usage information, there is no direct tie-in made between the explicitly measured data (in claims 5 and 6) and the gathered measurements introduced in independent claim 1. Nevertheless, these steps of measuring are addressed in the art rejection.

Also, Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice are now formally established on record as admitted prior art:

Official Notice is taken that it is old and well-known in the art of device monitoring to display usage statistics on the device screen. For example, remaining battery power is often displayed to a user. Displaying device usage statistics to a user often warns the user of performance issues that might need to be addressed in order to ensure efficient functioning of the device. For example, a low battery warning would give a user enough time to switch to outlet power or shut down applications that are needlessly using up the remaining battery power.

Official Notice is taken that it is old and well-known in the art of statistical reporting to publish tabulated usage statistics on the Internet. This practice helps to inform the general public of performance issues concerning various products. For example, it is common for consumers to compare ratings and complaints about comparable products that are available for purchase. By reporting tabulated usage statistics related to an electrical device, consumers are given access to tools that help them make more educated purchasing decisions.

Official Notice is taken that it is old and well-known in the art of usage statistics gathering to compensate a user for agreeing to allow his/her device usage activity to be

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monitored. This practice encourages participation from users in studies that require the gathering of usage statistics.

Official Notice is taken that it is old and well-known in the art of comparison shopping on the Internet to allow consumers to research usage statistics regarding products of interest via a query specifying the desired information. Construction of a query over the Internet assists a consumer in more rapidly tracking down the desired information.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 7 has been amended to recite a “predetermined fraction.” There is no support in the disclosure, as originally filed, for the fraction being predetermined.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites that "said gathering step measures duration of application usage, and when an auto-shutoff occurs, includes a predetermined fraction of the time from a last user interaction to said auto-shutoff in said measured duration." It is not clear what the scope of a "fraction" is. Does a "fraction" merely define a predefined portion of time, e.g., at which an auto-shutoff is inferred, or does it define a specific ratio calculated based on two measured time periods? Also, the significance of the fraction being "predetermined" is unclear. If the fraction is "predetermined," then what exactly is being measured?

Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrickson et al. (U.S. Patent No. 6,745,011) in view of Stemm et al. ("Measuring and Reducing Energy Consumption of Network Interfaces in Hand-Held Devices").

[Claims 1, 5] Hendrickson discloses, in an electronic device having a plurality of application programs, a method of monitoring usage comprising the steps of a) gathering usage statistics of said application programs (col. 3, lines 46-50; col. 8, lines 26-31); b) storing said usage statistics (col. 6, lines 5-26); and c) automatically transmitting said stored usage statistics to a server on a regular basis, whereby said server tabulates said usage statistics (col. 6, lines 5-26 -- Data is transmitted in real-time and/or on a periodic basis). Hendrickson collects various metrics corresponding to an electronic device, such as information about battery life, power consumption, battery charging information, and device performance in idle vs. normal mode (col. 3, lines 46-50; col. 8, lines 26-31; col. 11, lines 34-40; col. 15, lines 20-30). However, Hendrickson does not expressly teach that the usage statistics related to the application programs include usage statistics comprising: measurements denoting a duration of usage when said electronic device is powered by batteries, measurements denoting a duration of usage when said electronic device is powered by an external source of power, measurements denoting a duration of usage when an auto-shutoff of said electronic device occurs, and measurements denoting a duration of usage of said application programs when an interrupt occurs. These differences are only found in the non-functional descriptive material and are not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same

regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106. Nevertheless, Stemm monitors PDA performance and collects measurements denoting a duration of usage when said electronic device is powered by batteries (§§ 8-9 -- Power is measured in terms of energy utilized per unit time; therefore, by measuring power consumption, a duration of usage is measured as well), measurements denoting a duration of usage when said electronic device is powered by an external source of power (§§ 8-9 -- Voltage and current may be measured at the battery terminals. There are PDAs which have their own external batteries, i.e., an external source of power), and measurements denoting a duration of usage when an auto-shutoff of said electronic device occurs (§ 8, Table 1). Stemm includes measurements denoting a duration of usage of said application programs when an interrupt occurs (§§ 25-33). Hendrickson's invention serves to fulfill "a need for improvement in the real-time collection of wireless device statistics." (Col. 3, lines 38-39) These statistics help device manufacturers and network operators to "identify and replace 'out of spec' or malfunctioning devices, thus reducing the number of wireless data users experiencing wireless device related performance problems." (Col. 3, lines 50-53) Furthermore, analysis of these statistics assists device manufacturers in planning future wireless device features (col. 3, lines

53-57). Overall, such improvements will lead to increased customer satisfaction (col. 3, lines 57-63). Similarly, Stemm's research focuses on the effect on various software applications on power consumption in hand-held devices, such as personal digital assistants, in order to identify strategies for reducing energy consumption (¶¶ 1-6). As discussed above, Hendrickson gathers power consumption data; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Hendrickson to measure and gather usage statistics related to the application programs including usage statistics comprising: measurements denoting a first duration of usage when said electronic device is powered by batteries, measurements denoting a second duration of usage when said electronic device is powered by an external source of power, measurements denoting a duration of usage when an auto-shutoff of said electronic device occurs, and measurements denoting a duration of usage of said application programs when an interrupt occurs in order to more comprehensively identify potential improvements to be made to existing electronic devices, such as personal digital assistants in order to increase customer satisfaction with these devices (as suggested both by Hendrickson and Stemm).

[Claim 2] Hendrickson does not expressly disclose that said storing step comprises, for at least one said application program, storing of i) duration of usage since last said transmitting step occurred; ii) number of times used since last said transmitting step occurred; iii) total duration usage; and iv) total number of times used. These differences are only found in the non-functional descriptive material and are not functionally

involved in the steps recited nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106. Nevertheless, Stemm monitors power consumption of a PDA during various activities and idle and sleep states (¶ 8; Table 1 -- Power is measured in terms of energy utilized per unit time; therefore, by measuring power consumption, a duration of usage is measured as well) as well as the attention span of the PDA, which is defined as "the amount of time that the PDA waits before waking up and checking for new mail." (¶¶ 26-27) Consequently, Stemm is understood to track a duration of usage, details about each time an application is executed, total duration usage, and details about all of the times an application is executed. As discussed above, Hendrickson gathers power consumption data and transmits such information to a server periodically; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Hendrickson, for at least one said application program, to store i) duration of usage since last said transmitting step occurred; ii)

number of times used since last said transmitting step occurred; iii) total duration usage; and iv) total number of times used in order to more comprehensively identify potential improvements to be made to existing electronic devices, such as personal digital assistants in order to increase customer satisfaction with these devices (as suggested both by Hendrickson and Stemm).

[Claim 3] Neither Hendrickson nor Stemm expressly teaches the step of displaying said stored usage statistics on a display of said electronic device; however, Official Notice is taken that it is old and well-known in the art of device monitoring to display usage statistics on the device screen [now admitted prior art]. For example, remaining battery power is often displayed to a user [now admitted prior art]. Displaying device usage statistics to a user often warns the user of performance issues that might need to be addressed in order to ensure efficient functioning of the device [now admitted prior art]. For example, a low battery warning would give a user enough time to switch to outlet power or shut down applications that are needlessly using up the remaining battery power [now admitted prior art]. Since both Hendrickson and Stemm aim to improve customer satisfaction by improving electronic device performance, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Hendrickson-Stemm combination to incorporate the step of displaying said stored usage statistics on a display of said electronic device in order to warn users of performance issues that might need to be addressed in order to ensure efficient functioning of the device, thereby improving customer service.

[Claims 1, 4, 6, 7] Hendrickson does not expressly teach that said gathering step measures duration of usage of at least one said application program and does not include time when said electronic device is turned off (claim 4) or when an interrupt pauses use of said at least one application program (claim 6), wherein said gathering step measures duration of application usage, and when an auto-shutoff occurs, includes a predetermined fraction of the time from a last user interaction to said auto-shutoff in said measured duration (claim 7); however, Stemm measures the duration of usage of at least one said application program without including time when said electronic device is turned off (¶¶ 8, 30, Table 1 -- Sleep time is measured. Also, an assumption that a PDA is turned off may be made if a maximum attention span is reached. For example, a period of five minutes is identified as one potential predetermined fraction of time). As discussed above, Hendrickson gathers power consumption data; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Hendrickson such that said gathering step measures duration of usage of at least one said application program and does not include time when said electronic device is turned off (claim 4) or when an interrupt pauses use of said at least one application program (claim 6) wherein said gathering step measures duration of application usage, and when an auto-shutoff occurs, includes a predetermined fraction of the time from a last user interaction to said auto-shutoff in said measured duration (claim 7) in order to more comprehensively and accurately identify potential improvements to be made to existing electronic devices, such as personal digital assistants, in order to increase customer satisfaction with these devices

(as suggested both by Hendrickson and Stemm). As per claim 1, measuring duration of application usage, and when an auto-shutoff occurs, including a predetermined fraction of the time from a last user interaction to said auto-shutoff in said measured duration (as addressed in claim 7) is an example of collecting measurements for denoting a duration of usage adjusted by a predetermined scale factor (as recited in claim 1).

[Claim 8] Hendrickson discloses that said electronic device is a palm-sized computer system (col. 5, lines 55-57).

[Claim 9] Hendrickson discloses that said electronic device is a wireless telephone (col. 5, lines 55-57).

[Claims 10-15] Claims 10-15 recite limitations already addressed by the rejection of claims 1-3, 5, 8, and 9 above; therefore, the same rejection applies. Furthermore, Hendrickson discloses that the electronic device is a personal digital assistant (col. 5, lines 55-57).

[Claims 16-21] Claims 16-21 recite limitations already addressed by the rejection of claims 1-3, 5, 8, and 9 above; therefore, the same rejection applies. Furthermore, Hendrickson discloses that the electronic device comprises a processor coupled to a bus, a display coupled to said bus and a memory coupled to said bus, said memory having a database of records of different categories and instructions implementing a method of displaying information (col. 5, lines 55-57; col. 6, lines 5-26; col. 13, lines 37-43).

[Claims 22-25] Claims 22-25 recite limitations already addressed by the rejection of claim 1 above; therefore, the same rejection applies. Additionally, Hendrickson discloses a system comprising a plurality of electronic devices having application programs and a computer server (col. 4, lines 37-40; col. 5, lines 53-57; col. 6, lines 5-26).

Furthermore, as per claim 23, Hendrickson's system comprises host computer, and further comprises the step of transmitting said stored usage statistics to said host computer before transmitting said stored usage statistics to said server (col. 6, lines 5-26 -- The statistics may be initially gathered and stored by software in the operating system of the device before they are transmitted to the server).

Regarding claim 24, neither Hendrickson nor Stemm expressly discloses the step of publishing the tabulated usage statistics on the Internet. However, Official Notice is taken that it is old and well-known in the art of statistical reporting to publish tabulated usage statistics on the Internet [now admitted prior art]. This practice helps to inform the general public of performance issues concerning various products [now admitted prior art]. For example, it is common for consumers to compare ratings and complaints about comparable products that are available for purchase [now admitted prior art]. By reporting tabulated usage statistics related to an electrical device, consumers are given access to tools that help them make more educated purchasing decisions [now admitted prior art]. Since both Hendrickson and Stemm aim to improve customer satisfaction by improving electronic device performance, the Examiner submits that it

would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Hendrickson-Stemm combination to incorporate the step of publishing the tabulated usage statistics on the Internet in order to give consumers access to tools that help them make more educated purchasing decisions, thereby fostering a more trustworthy relationship among device manufacturers and their customers.

In reference to claim 25, neither Hendrickson nor Stemm expressly discloses the step of crediting value to an account corresponding to at least one of said electronic devices; however, Official Notice is taken that it is old and well-known in the art of usage statistics gathering to compensate a user for agreeing to allow his/her device usage activity to be monitored [now admitted prior art]. This practice encourages participation from users in studies that require the gathering of usage statistics [now admitted prior art]. Since both Hendrickson and Stemm aim to improve customer satisfaction by improving electronic device performance and Hendrickson relies on participation from actual electronic device users (col. 13, lines 17-40), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Hendrickson-Stemm combination to credit value to an account corresponding to at least one of said electronic devices in order to encourage participation from electronic device users in Hendrickson's and Stemm's studies that require the gathering of usage statistics.

[Claims 26-29] Claims 26-29 recite limitations already addressed by the rejection of claims 1 and 22-25 above; therefore, the same rejection applies. Further regarding claims 28 and 29, neither Hendrickson nor Stemm expressly discloses that the tabulated usage results are stored in a database that can be queried (claim 28) by receiving a query request, applying said query to said database, receiving query results from said database, formatting said results, and transmitting said formatted results (claim 29). However, the modified version of the Hendrickson-Stemm combination discussed in claim 24 above addresses the step of publishing the tabulated usage statistics on the Internet in order to give consumers access to tools that help them make more educated purchasing decisions. Official Notice is taken that it is old and well-known in the art of comparison shopping on the Internet to allow consumers to research usage statistics regarding products of interest via a query specifying the desired information [now admitted prior art]. Construction of a query over the Internet assists a consumer in more rapidly tracking down the desired information [now admitted prior art]. The steps of claim 29 are typically performed when submitting an Internet-based query and receiving the corresponding query results. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify the Hendrickson-Stemm combination such that the tabulated usage results are stored in a database that can be queried (claim 28) by receiving a query request, applying said query to said database, receiving query results from said database, formatting said results, and transmitting said formatted results (claim 29) in

order to assist a consumer in more rapidly tracking down the desired information to make a more educated purchasing decision.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692
January 21, 2008